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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/584,970

10/23/2006

Gary Marshall

253367

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23460

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12/22/2009

LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT

PAPER NUMBER

3781

NOTIFICATION DATE

DELIVERY MODE

12/22/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/584,970	Applicant(s) MARSHALL, GARY	
	Examiner NIKI M. ELOSHWAY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-19 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/30/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Luedecke (U.S. 6,186,355). Luedecke teach a receptacle for waste, shown in figure 1B. The receptacle includes an elongated body member 7 having a first end 8 for locating on the ground (col. 5 lines 38-40) and a second end with an opening therein at 38 for receipt of waste. The body member has a first chamber defined by body 7 and a second chamber defined by element 21. The second chamber disposed entirely within cavity 19 of the first chamber and is in fluid communication with the first chamber via the upper opening of element 21. The first chamber has inlet means at 38 to permit atmospheric air to be drawn into the first chamber on the application of a vacuum to the body member, as described in col. 6 lines 1-6. The second chamber has inlet means at the open upper end thereof to permit atmospheric air from said first chamber to be drawn into said second chamber on the application of the vacuum to the body member. The contents of the receptacle are capable of being drawn from said receptacle on the application of the vacuum to the body member via opening 52, by entraining with the atmospheric air drawn through the

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chambers into the receptacle by the vacuum. The second chamber has a tapered shape as shown in figures 4 and 5. The taper of the second chamber is in the lower end of the body which is the first end 8.

4. Claims 1-11, 14, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Decaux (FR 2,728,879). Decaux teaches a receptacle 10, shown in figure 4, having a body member at lead line 38, with a first end at the lower portion thereof, for locating on the ground and second end, at the upper portion, with an opening therein at lead line 30. The inlet means is shown at lead line 4, in the body member through which air from the atmosphere can be drawn in response to a vacuum applied at the opening (as shown by the arrows in figure 4). The venturi device located in the body member at lead line 40 for increasing the velocity of the air once inside the body member to assist in drawing waste contained in the receptacle out through the opening. The device comprising a dividing member, which is the walls of the inner container at lead line 36, that divides the body member along at least part of its length into an inner region and an outer region. The dividing member has an aperture at lead line 40 such that the velocity of air moving in response to the vacuum from the outer region to the inner region increases due to a venturi effect, as it passes through said aperture. The size of the opening is the restriction means.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decaux (FR 2,728,879). Decaux discloses the claimed invention except for the plurality of rows of holes and exact location of the holes. It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to provide the receptacle of Decaux with two rows of holes, in order to increase the flow into the container and since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the receptacle of Decaux with the row being located a distance of 150mm from the second end, since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Decaux (FR 2,728,879) in view of Pontius (U.S. 5,158,199). Decaux discloses the claimed invention except for the restriction means being an insert. Pontius teaches that it is known to provide a container with a restriction means which is an insert (see figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Decaux with the restriction means of Pontius, in order to allow for easy access and reduce odor.

Allowable Subject Matter

8. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the two chambers of the container.

10. THIS ACTION IS NON-FINAL.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/
Niki M. Eloshway
Examiner
Art Unit 3781

nme